REMARKS

Claims 1-47 are pending. Claims 46-47 were objected and not examined. Claims 1-8, 19-33, 35 and 40-45 stand rejected. Claims 9-18, 34, 36-38 and 39 were objected to as being dependent upon rejected claims but are otherwise allowable.

Claim 7 has been amended to correct its recitation of dependency. Claims 6-9, 15, 17, 20, 21, 42, 43, 46 and 47 have been amended only to correct grammatical and/or formatting issues. Claims 22, 26 40 and 44 have been amended to correct antecedent-basis problem. Prior to the current amendment, "stopping reporting" and "continuing reporting" were recited without antecedent basis of actions of "reporting." After the current amendment, the actions "to not report" and "to report" are now recited affirmatively.

In claims 44 and 46, the limitation of "reporting module" is deleted because it is not necessary for the claimed inventions.

Objections to Multiple Dependent Claims

Claims 46-47 were objected to under 37 C.F.R. 1.75(c) as being in improper form and were not examined because "a multiple dependent claim cannot depend on another *dependent claim*." (emphasis added). Assignee disagrees. In relevant part, 37 C.F.R. 1.75(c) states:

> "One or more claims may be presented in dependent form, referring back to and further limiting another claim or claims in the same application. *Any dependent claim which refers to more than one other claim ("multiple dependent claim") shall refer to such other claims in the alternative only. A multiple dependent claim shall not serve as a basis for any other multiple dependent claim* ..." (emphasis added)

Thus, while a multiple dependent claim cannot depend from another *multiple dependent claim*, a multiple dependent claim *is permitted to* depend from a *single-dependent claim*. The only other restriction present in 37 C.F.R. 1.75(c) regarding multiple dependent claims is that the references to such other claims are in the *alternative*. None of claims 1-25, which claims 46 and 47 depend upon, are multiple dependent claims or depend from a multiple dependent claim. Further, claims 46 or 47 refer to parent claims 1 through 25 in the alternative (i.e., "in any one of claims 1-25") as required.

Accordingly, claims 46 and 47 are believed to meet the requirements of 37 C.F.R. 1.75(c) and are, therefore, in condition for immediate allowance. Such action is respectfully requested.

Section 102 Claim Rejections

Claims 1-8, 19-33, 35 and 40-45 were rejected as being anticipated by McGee et al. (USPUB 2003/0110007) under 35 U.S.C. 102(e).

"For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be *identically* shown in a single reference." *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677 (Fed. Cir. 1988), quoted in *In re Bond*, 910 F.2d 831, 832 (Fed. Cir.), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (1990) (vacating and remanding Board holding of anticipation); see also M.P.E.P. 2131. Assignee respectfully submits that McGee fails to show every element of the invention recited in claim 1 and other rejected claims.

Assignee would like to draw Examiner's attention to the teaching of McGee as summarized in the McGee Abstract:

> "The methods include metric *correlation and grouping* methods that analyze a group of temporally related metrics, and correlate pairs of the metrics in the group. In one embodiment, rank correlation techniques are used to perform this correlation. Methods are also described for grouping metrics using a dynamic correlation pair graph that preserves all of the correlated relationships." (emphasis added.)

McGee's teaching is about correlation between system metrics and how to identify and preserve such relationship. On the other hand, the claimed inventions are directed to methods that "substantially *reduce* the *quantity* of performance monitoring data collected and reported." *See* Abstract and claims. One of the claimed methods for reducing the quantity of data collected is to reduce the *number* of metrics monitored by monitoring only one of any two metrics that are closely correlated. *See* Abstract and for example, claim 22. One derivative benefit of the claimed inventions is to make identifying correlations between metrics easier because there are fewer data to correlate.

More specifically, regarding independent claim 1's act of "reporting the sampled value of the first metric if the sampled value is not between a first parameter and a second parameter;" Examiner asserted that it was taught by McGee in paragraphs 64 and 66. Assignee respectfully submits that the text in paragraphs 64 or 66 does not teach this act, explicitly or implicitly.

Paragraph 64 of McGee describes Metric Reporting module 106, which provides reports on metrics to a user such as a system manager. The report may include data, analysis or alarms regarding the system, but there is no teaching regarding selectively reporting sampled metric values as recited in independent claim 1, i.e., "reporting the sampled value of the first metric *if* the sampled value is not between a first parameter and a second parameter."

Simmilarly, paragraph 66 and Fig. 2 of McGee describe "Adaptive threshold determination," wherein the threshold is used to determine when to set an alarm. Again, there is no teaching regarding selectively reporting/not reporting sampled metric values.

The recited act of "reporting the sampled value of the first metric if the sampled value is not between a first parameter and a second parameter" and its companion act of "not reporting the sampled value of the first metric if the sampled value is between a first parameter and a second parameter" of independent claim 1 reduce the amount of sampled data reported. McGee does not disclose anything similar to such teaching. On the contrary, as illustrated by Figures 1 and 2 and paragraphs 56-69, McGee discloses a method of metric monitoring and data reporting. Specifically, in Figure 1 of McGee, ***all*** sampled metric data are collected in metric collection module 102 and sent to Metric analysis 104.

> "The data adapters 108 transmit their information to a dynamic sampling agent 110, which collects the metrics, performs fixed and statistical threshold checks, and sends *both the metric data* and *threshold alarm events* to metric analysis module 104." Paragraph 57, emphasis added.

Figure 2 and the associated text in paragraphs 65-69 describe more details about the dynamic sampling agent 110, where the alarm threshold is determined dynamically. The data collection method is not discussed or changed.

Further, it appears that Examiner equates the "thresholds" discussed in paragraphs 64 and 66 of McGee as "a first parameter and a second parameter" recited in claim 1. Assignee disagrees. The "thresholds" in McGee are used to trigger "alarm events." These "alarm events" are not metric data because "both the metric data and threshold alarm events" are sent. *See* McGee, paragraph 57 as quoted above. Therefore, the threshold in McGee cannot be the "first parameter" and the "second parameter" recited in claim 1, which are used to "trigger" reporting/not reporting metric data.

Assignee respectfully submits that McGee does not disclose at least the acts of "reporting the sampled value of the first metric if the sampled value is not between a first parameter and a second parameter" and its companion act "not reporting the sampled value of the first metric if the sampled value is between a first parameter and a second parameter" of independent claim 1. That is, not every element of claim 1 is *identically* shown in McGee. Thus, claim 1 is not anticipated by McGee. Accordingly, independent claim 1 is allowable and its allowance is respectfully requested.

Independent claims 26 and 44 also recite acts of sampling and selectively reporting. Therefore, they are allowable for at least the same reasons as is independent claim 1 and their allowance is requested.

Claims 2-8, 19-21, 27-33, 35, 40-45 depend upon one of claims 1, 26 or 44, and are allowable for at least the same reasons as are independent claims 1, 26 and 44. Including the claims 9-18, 34, 36-38 and 39 that are objected but allowable, all claims except claims 22-25 and 46-47 are now allowable and their allowance is requested.

Regarding independent claim 22, Examiner asserted that McGee teaches:

> stopping sampling and stopping reporting the sampled value of the second system metric if |cc| is not less than a threshold; (page 2, paragraph 0064 & 0066) and continuing sampling and reporting the sampled value of the second system metric if |cc| is less than a threshold, wherein |cc| is the absolute value of correlation coefficient |cc|. McGee et al. (USPUB 2003/0110007) teaches an alert/report when a it is not within certain parameters/thresholds (page 2, paragraph 0066). Therefore it would be within reasonable interpretation to conclude that the system will continue sampling and reporting when it is within the threshold.

Assignee disagrees.

McGee discusses calculating correlations only between metrics in a group of out-of-tolerance metrics to reduce the number of metrics that it must attempt to *correlate*, e.g. in paragraph 17. The goal of McGee appears to be calculating, identifying and preserving the correlations between metrics. McGee teaches how to reach this goal, i.e. calculate correlations. McGee does not teach, explicitly or implicitly, what happens *after* this goal is reached, i.e., correlations are calculated. Paragraphs 64 and 66 do not discuss selectively stopping/continuing sampling or reporting. It is noted that the "threshold" recited in claim 22 is a threshold related to a "correlation coefficient," while the "threshold" discussed in McGee is related to a metric.

There is no teaching or suggestion of selectively stopping/continuing sampling or reporting the metrics *after* a correlation is calculated. McGee does not disclose the recited act of "stopping sampling ... and continuing sampling" of claim 22.

Therefore, independent claim 22 is not anticipated. Claim 22 is allowable and its allowance is requested. Claims 23-25 depend upon claim 22 and are, therefore, allowable for at least the same reasons as is claim 22. Accordingly, claims 22-25 are allowable and their allowance is requested.

For similar reasons, claims 19, 40 and 44, all of which recite "stopping sampling ... and continuing sampling," are allowable and their allowance is requested.

For the above reasons, claims 1-25 are allowable. Claims 46 and 47 are multiple dependent claims, each of which depends upon claims 1-25. Therefore, claims 46 and 47 are allowable and their allowance is requested.

All pending claims 1-47 are allowable and their allowance is requested.

For the following additional reasons, various dependent claims are allowable. Regarding claim 6, Examiner asserted that "McGee teaches assuming the sampled value of the first metric that is not reported with an average, wherein the average is an average of previously sampled data of the first system metric. (Page 4, paragraph 0058)" Assignee disagrees. Paragraph 58 discusses nothing about an "average." McGee may discuss using statistical parameters, including "average," "standard deviation" etc. in "correlation" analysis, but there is no teaching of "*assuming* the sampled value of the first metric that is not reported with an average." Since McGe uses all *sampled* metric data collected by metric collection module 102 or metric analysis 104, there is no need to "assume" them with other values (e.g. an average). This act is not taught explicitly or implicitly, nor is it suggested by McGee. For this additional reason, claim 6 is not anticipated by McGee. Claim 6 is allowable and its allowance is requested.

Similarly, claims 7 and 8 recite assuming unreported metric data with an "average" are not anticipated by McGee and are allowable. Their allowance is requested.

For the same reasons, claims 20, 31-33 and 42 are allowable and their allowance is requested.

CONCLUSIONS

Reconsideration and allowance of pending claims 1-47 in light of the above remarks is respectfully requested. If, after considering this reply, the Examiner believes that a telephone conference would be beneficial towards advancing this case to allowance, the Examiner is strongly encouraged to contact the undersigned attorney at the number listed.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this document is being sent by facsimile transmission to Examiner Aditya S. Bhat, 571/273-8300, Commissioner of Patents, on July, 28 2005.

Rebecca Ginn